U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSHUA R. PUFFINBARGER and DEPARTMENT OF THE NAVY, MILITARY SEALIFT COMMAND PACIFIC, Oakland, CA

Docket No. 02-1573; Submitted on the Record;
Issued November 8, 2002

DECISION and ORDER

Before COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS, MICHAEL E. GROOM

The issue is whether appellant had any disability requiring further medical treatment on or after December 30, 2000, causally related to his July 14, 1991 employment injury.

This is appellant's second appeal before the Board. In the prior appeal, the Board remanded the case to the Office of Workers' Compensation Programs for further development of the factual and medical evidence. The facts and circumstances of the case are set forth in the prior decision and are hereby incorporated by reference.[1]

Upon remand on December 19, 1997 the Office accepted appellant's claim for a herniated disc,[2] paid him lump-sum wage-loss compensation from June 26, 1992 to April 6, 1999, when he was placed on the periodic rolls.

By report dated September 14, 1998, appellant's treating physician, Dr. Ralph Knudson, a Board-certified family practitioner, diagnosed "chronic neck and lower back pain presumably secondary to prior C6-7 disc herniation and secondary myositis paraspinal scarring and probably irritative neuropathy, plus chronic recurring low back pain presumably due to posture, degenerative arthritis and possible exacerbated by prior motor vehicle accident injuries."[3] Dr. Knudson opined that appellant was disabled from heavy-duty labor due to his cervical spine injury and he noted that appellant had had worsening problems with back pain secondary to overweight condition and muscle stiffness related to his relative inactivity. Dr. Knudson opined that appellant had been "prone to his inactivity and muscle stiffness and fatigue because of pain limitations caused him by the July 1991 accident."

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[1] Docket No. 95-2408, issued August 28, 1997.

[2] It had previously accepted left arm, forearm, shoulder and hand sprains.

[3] Appellant was involved in three motor vehicle accidents in 1993, 1994 and 1997. The 1997 injury was largely a left shoulder impact injury.

On January 8, 1999 appellant worked one day, earned $50.00 and had a heart attack. He never returned to work.

On August 18, 1999 the Office determined that a second opinion medical evaluation was required and referred appellant, together with an updated statement of accepted facts, questions to be addressed and the relevant case record, to Dr. Dale E. Minner, a Board-certified orthopedic surgeon.

By report dated September 13, 1999, Dr. Minner reviewed appellant's factual and medical history, discussed his present complaints and noted that appellant had no visible atrophy or weakness in the upper or lower extremities, negative straight leg raising both seated and supine, good dorsiflexion strength of the great toes, well-callused hands, normal perfusion, a well-healed scar over the radial aspect of the right wrist with preserved range of motion to flexion, extension, ulnar and radial deviation, but tingling on both hands on Tinel's testing. He diagnosed herniated nucleus pulposus C6-7 with radicular symptoms unconfirmed, related to the occurrence of July 14, 1991. Dr. Minner also diagnosed multiple conditions unrelated to the 1991 incident, including bilateral carpal tunnel syndrome, degenerative disc disease of the lumbar spine with bulging disc and narrowing at L5-S1 without radiculopathy, diabetes mellitus, Type II, status post gunshot wound of the right wrist, well healed and asymptomatic, arterio-sclerotic vascular disease with history of myocardial infarction, treated by stint insertion on the right coronary artery and tobacco use. Dr. Minner answered the Office's question regarding whether appellant could be employed, noting that he had been gainfully employed at intervals as long as one and a half years, that he had worked for a recycling operation and was now doing housework and caring for minor children, that he was able to drive for at least 30 to 60 minutes and that his physical therapy evaluations had documented his ability to lift up to 100 pounds well after the expected healing date for his C6-7 disc. Dr. Minner opined that appellant could perform any job classified by the *Dictionary of Occupational Titles* as sedentary, exerting up to 10 pounds of force occasionally and/or a negligible amount of force frequently and that it was also likely that he could perform light-duty work exerting up to 20 pounds of force occasionally and walking and standing to a significant degree, or sitting and using foot or arm controls. He opined that all of the work restrictions given were "more likely than not … associated with either the July 14, 1991 occurrence or with his September 5, 1996 work-related occurrence while working for another employer." Dr. Minner opined that possibly some of appellant's present cervical complaints might be related to the July 14, 1991 occurrence, but that there had been three intervening motor vehicle accidents, which involved the neck, back, head and left shoulder. He opined that the medical records indicated that appellant's cervical and lumbar disc problems had resolved at least by September 5, 1996 and that more than sufficient healing time had passed since July 14, 1991. Dr. Minner noted that at the present time appellant had no significant dysfunction of either shoulder and that the carpal tunnel syndrome clearly had no logical relationship to any of his cervical or work-related injuries. He opined that there were no objective clinical findings that indicated a need for additional medical treatment for the effects of the July 14, 1991 occurrence and indicated that he did not believe appellant continued to experience significant residuals from the accepted conditions. Dr. Minner did note, however, that appellant did continue to experience pain and discomfort that interfered with his avocational interests, but noted that these were not primarily due to the occurrence of 1991. Upon requested clarification by the Office, Dr. Minner indicated that appellant could be employed full time eight

hours per day, five days per week and opined that he had no permanent residuals related to his work injury.

On December 14, 1999 appellant was referred for vocational rehabilitation.

The Office determined that there existed a conflict in medical opinion evidence between Drs. Knudson and Minner. On August 28, 2000 the Office referred appellant, together with an updated statement of accepted facts, questions to be addressed and the relevant case record, to Dr. Peter D. Wirtz, a Board-certified orthopedic surgeon, for an impartial medical evaluation.

By report dated September 20, 2000, Dr. Wirtz reviewed appellant's factual and medical history, discussed his present symptomatology and reported the results of his physical examination, which included no left hand, arm, forearm, or left shoulder symptoms. Dr. Wirtz noted as follows:

> "Presently examination does not reveal left arm, left forearm, hand or left shoulder symptoms indicating that any such injury that occurred on July 14, 1991 has resolved. The injury to the neck area culminating in diagnosis of C6-7 degenerative disc disease after July 14, 1991 injury indicated an aggravation of a preexisting degenerative disc condition. This aggravation, soft strain injury, resolved over a period of management following July 14, 1991. Ongoing symptoms to the neck area would relate to activities that irritate the cervical degenerative disc disease condition. Such episodes are noted following motor vehicle injury episodes. This degenerative disc condition, chronically symptomatic with activities has resulted in inactivity and deconditioning in and about the area of the neck and the upper extremities. This led to a deconditioning of his lower extremities and spine based on his weight gain."

Dr. Wirtz noted that appellant's present degenerative disc disease in the neck would restrict his ability to return to work as an able seaman maintenance worker, as it restricted his overhead reaching and that these restrictions were due to the degenerative disc disease condition and were unrelated to the July 14, 1991 work incident. No specific home exercise program was recommended and Dr. Wirtz opined that appellant did not need medication.

On October 27, 2000 the Office provided appellant with a notice of proposed termination of compensation and medical benefits finding that the weight of the medical evidence of record established that he had no further disability for work nor residuals requiring further medical treatment, causally related to his July 14, 1991 injuries. The Office advised that Dr. Wirtz's opinion constituted the weight of the medical opinion evidence of record on this issue. Appellant was given 30 days within which to submit further evidence or argument if he disagreed with the proposed action.

No further evidence or argument was received from appellant.

By decision dated December 18, 2000, the Office terminated compensation finding that appellant had no further disability for work nor residuals requiring further medical treatment, causally related to the July 14, 1991 left arm, forearm, shoulder and neck injuries.

By letter dated June 17, 2001, appellant requested reconsideration of the December 18, 2000 decision and in support he submitted medical records from Dr. Richard F. Nieman, a Board-certified neurologist. Dr. Nieman reported physical examination results, found marked degenerative arthritis at C5-6 and C6-7, stated that appellant's neck limitation was considerable and opined that he could not return to work as a seaman. Dr. Neiman provided an impairment rating including limitations in range of motion of the left upper extremity and the neck.

By decision dated August 21, 2001, the Office denied modification of the December 18, 2000 decision. The Office found that Dr. Neiman's report did not demonstrate any objective evidence of continued injury-related residuals.

By letter dated February 7, 2002, appellant again requested reconsideration, resubmitting the report from Dr. Neiman and his curriculum vitae. He also provided an October 15, 2001 report, in which he stated that the motor vehicle accidents did not help appellant's neck condition, that the primary injury occurred on July 14, 1991 and that he could not return to work as an able seaman but could do other types of work.

By decision dated March 29, 2002, the Office denied modification of the August 21, 2001 decision. The Office found that the well-rationalized report of Dr. Wirtz, was entitled to special weight and as such, constituted the weight of the medical opinion evidence in establishing that appellant had no further injury-related disability for work or injury residuals requiring further medical treatment.

The Board finds that appellant had no disability for work or injury residuals requiring further medical treatment on or after December 30, 2000, causally related to his July 14, 1991 employment injury.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[4] After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.[5] Further, the right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for wage loss.[6] To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that require further medical treatment.[7]

The Office met this burden of proof through the well-rationalized reports of Dr. Wirtz.

[4] *Harold S. McGough*, 36 ECAB 332 (1984).

[5] *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

[6] *Marlene G. Owens*, 39 ECAB 1320 (1988).

[7] *See Calvin S. Mays*, 39 ECAB 993 (1988); *Patricia Brazzell*, 38 ECAB 299 (1986); *Amy R. Rogers*, 32 ECAB 1429 (1981).

In this case, appellant's treating physician, Dr. Knudson, opined that he remained totally disabled due to his work-related injuries. The Office second opinion specialist, Dr. Minner, however, after a complete review of the records and examination of appellant, opined that his multiple conditions were unrelated to the July 14, 1991 employment injuries.

The Federal Employees' Compensation Act, at 5 U.S.C. § 8123(a), in pertinent part, provides: "If there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

In this case, the Office correctly determined that a conflict had arisen between Drs. Knudson and Minner and referred appellant to Dr. Wirtz, selected as the impartial medical specialist.

Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.[8]

In a well-rationalized report based upon a complete and accurate factual and medical background, Dr. Wirtz provided his examination results, found no objective residuals and opined that appellant's accepted conditions had resolved and that there was no need for further medical treatment for such resolved injuries. Dr. Wirtz opined that, although appellant was disabled from returning to his date-of-injury job, he could perform other full-time work without problems and he needed no further medical treatment or medication. Dr. Wirtz noted that the restrictions he placed on appellant regarding his neck were not due to the accepted conditions, but were due to his degenerative disc disease condition unrelated to the events of July 14, 1991. As Dr. Wirtz provided a complete and well-rationalized medical report based upon an accurate factual and medical background, it is entitled to that special weight. Accordingly, that special weight results in his report constituting the weight of the medical opinion evidence in establishing that appellant had no further disability for work or injury residuals requiring further medical treatment, causally related to the events of July 14, 1991.

Thereafter appellant submitted several short reports from Dr. Neiman. These reports merely opined that appellant could not return to work as a seaman, but did not support that he remained totally disabled for all work. Dr. Neiman identified several conditions which had not been accepted as being employment related, as causing his work limitations at the present time and as such, disability from these conditions would not be compensable under the Act. Dr. Neiman's reports do not substantively conflict with the report of Dr. Wirtz, as they find that appellant is capable of work outside of seaman duties and they suggest that appellant's intervening motor vehicle accidents may have contributed to his present limitations and they identify no disability due to, objective evidence of, or residuals from any of appellant's July 14, 1991 accepted injuries. Consequently, Dr. Neiman's reports do not create a new conflict with the impartial medical report from Dr. Wirtz and appellant has not provided substantive evidence to contradict the findings of Dr. Wirtz.

[8] *Aubrey Belnavis*, 37 ECAB 206, 212 (1985).

Therefore, the report from Dr. Wirtz continues to constitute the weight of the medical opinion evidence of record and establishes that appellant had no disability for work or injury residuals requiring further medical treatment on or after December 30, 2000, causally related to his July 14, 1991 employment injury.

The March 29, 2002 and August 21, 2001 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
November 8, 2002

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member